

RECEIVED  
JAN 04 2006

NO. 05-16738

Tellis v. Katz, Formica,  
et al.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERT GITHERE,

Plaintiff-Appellant

vs.

CONSOLIDATED AMUSEMENT CORPORATION, INC.;  
JOHN TELLIS, General Manager of Consolidated Amusement, Inc.,

Defendants-Appellees

AN APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

---

MOTION FOR SECOND ENLARGEMENT OF  
TIME TO FILE OPENING BRIEF

DECLARATION OF COUNSEL

EXHIBITS "A" - "C"

CERTIFICATE OF SERVICE

---

ANDRÉ S. WOOTEN 3887  
Century Square, Suite 1909  
1188 Bishop Street  
Honolulu, Hawai'i 96813  
Telephone: (808) 545-4165  
Attorney for Plaintiff-Appellant

EXHIBIT "D"

NO. 05-16738

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff-Appellant,	)	MOTION FOR SECOND
	)	ENLARGEMENT OF TIME TO FILE
vs.	)	OPENING BRIEF
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION INC.; JOHN	)	
TELLIS, General Manager of	)	
Consolidated Amusement Inc.,	)	
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
ALOHA STADIUM AUTHORITY	)	
INC.,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

---

MOTION FOR SECOND ENLARGEMENT  
OF TIME TO FILE OPENING BRIEF

Comes now Plaintiff-Appellant GILBERT GITHERE, by and through his attorney of record, André S. Wooten, who hereby files this Motion for a Second Enlargement to Time of 30 days to file the Opening Brief of the Plaintiff-Appellant

in this case as we have not yet receiving the transcript, as the court reporter was out of town last week and also due to the impending Christmas and Holiday Season and family and other case commitments for counsel's time.

This Motion is brought pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure and is supported by the attached Declaration of Counsel and the records and files of this case.

DATED: Honolulu, Hawaii, Jun 3, 2006.

  
\_\_\_\_\_  
ANDRE' S. WOOTEN  
Attorney for Plaintiff-Appellant

NO. 05-16738

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff-Appellant,	)	DECLARATION OF COUNSEL
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION INC.; JOHN	)	
TELLIS, General Manager of	)	
Consolidated Amusement Inc.,	)	
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
ALOHA STADIUM AUTHORITY	)	
INC.,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney of record for Plaintiff-Appellant in the above-entitled matter and is, therefore, aware of the history of this matter.
2. The District Court of Hawaii has granted Defendant's Order to interview Plaintiff-Appellant on January 20, 2006, regarding collection of \$4,300.00+ costs bill in this case.
3. Plaintiff-Appellant filed a Motion for Stay of Execution of Collection of Costs Billed Pending Appeal. However, the hearing is set after the exam, on February 24, 2006.
4. The Court denied Plaintiff's Ex Parte Motion to Shorten Time for said hearing.
5. Hence, Plaintiff-Appellant requests that the Ninth Circuit Court of Appeals grant his Motion for Stay of Execution of Collection of Costs Billed pending this appeal determination.
6. Attached hereto as Exhibit "A" is a true and correct copy of Defendant's Order for Examination.
7. Attached hereto as Exhibit "B" is a true and correct copy of Plaintiff's Motion for Stay of Execution of Costs Billed Pending Appeal, filed on December 23, 2005.

8. Attached hereto as Exhibit "C" is a true and correct copy of Plaintiff's Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal, filed on December 23, 2005.

Wherefore, Declarant respectfully requests that the Court grant the instant Motion for Second Enlargement of Time to File Opening Brief and that Plaintiff-Appellant have until Feb 10, 2006 to file his Opening Brief, in the interest of substantial justice for good cause stated above.

Further, Declarant sayeth naught.

  
ANDRE' S. WOOTEN  
Attorney for Plaintiff-Appellant

**EXHIBIT "A"**

TORKILDSON, KATZ, FONSECA,  
MOORE & HETHERINGTON,  
Attorneys at Law, A Law Corporation

RICHARD M. RAND 2773-0  
(rmr@torkildson.com)

TAMARA M. GERRARD 6153-0  
(tmg@torkildson.com)

HEATHER M. RICKENBRODE 8174-0  
(hmr@torkildson.com)

700 Bishop Street, 15th Floor

Honolulu, HI 96813-4187

Telephone: (808) 523-6000

Facsimile: (808) 523-6001

Attorneys for Defendant  
CONSOLIDATED AMUSEMENT  
COMPANY, LTD. AND JOHN TELLIS

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 09 2005

at 2 o'clock and 15 min. M  
SUE BEITIA, CLERK

**LODGED**

DEC 06 2005

CLERK, U. S. DISTRICT COURT  
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT  
CORPORATION, LTD.; ALOHA  
STADIUM AUTHORITY, INC., and  
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

DEFENDANTS CONSOLIDATED  
AMUSEMENT COMPANY, LTD.  
AND JOHN TELLIS' EX PARTE  
MOTION FOR EXAMINATION OF  
JUDGMENT DEBTOR;  
DECLARATION OF TAMARA M.  
GERRARD; DECLARATION OF  
HEATHER M. RICKENBRODE;  
EXHIBITS "A" THROUGH "H";  
ORDER GRANTING  
DEFENDANTS CONSOLIDATED  
AMUSEMENT COMPANY, LTD.  
AND JOHN TELLIS' EX PARTE  
MOTION FOR EXAMINATION OF  
JUDGMENT DEBTOR;



CERTIFICATE OF SERVICE

DATE: January 20, 2006

TIME: 9 am

JUDGE: Leslie E. Kobayashi

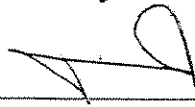
**DEFENDANTS CONSOLIDATED AMUSEMENT  
COMPANY, LTD. AND JOHN TELLIS' EX PARTE  
MOTION FOR EXAMINATION OF JUDGMENT DEBTOR**

Defendants and Judgment Creditors CONSOLIDATED AMUSEMENT COMPANY, LTD. and JOHN TELLIS, by and through their undersigned attorneys, hereby move this Honorable Court, ex parte, for an order to be made and entered herein citing Plaintiff and Judgment Debtor Gilbert Githere to appear before this Honorable Court in its courtroom in Honolulu, Hawaii for examination as a judgment debtor, as provided by law.

This Motion is made pursuant to Rule 69(a) of the Federal Rules of Civil Procedure, as amended, the Declarations and Exhibits attached hereto and made a part hereof, and the pleadings and records in this action.

DATED: Honolulu, Hawaii, December 6, 2005.

TORKILDSON, KATZ, FONSECA,  
MOORE & HETHERINGTON,  
Attorneys at Law, A Law Corporation

  
\_\_\_\_\_  
RICHARD M. RAND  
TAMARA M. GERRARD  
HEATHER M. RICKENBRODE  
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,  
Plaintiff,

v.

CONSOLIDATED AMUSEMENT  
CORPORATION, LTD.; ALOHA  
STADIUM AUTHORITY, INC., and  
John Tellis, General Manager,  
Defendants.

CIVIL NO. CV04 00116 DAE LEK  
DECLARATION OF TAMARA M.  
GERRARD

**DECLARATION OF TAMARA M. GERRARD**

I, TAMARA M. GERRARD, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am an attorney duly licensed to practice in the State of Hawaii and represent Defendants and Judgment Creditors CONSOLIDATED AMUSEMENT CORPORATION, LTD and JOHN TELLIS (hereinafter "Judgment Creditors") in the above-entitled matter. All statements herein are made upon personal knowledge unless otherwise specified.

2. On July 26, 2005 Judgment was entered in this action in favor of Defendants and against Plaintiff and Judgment Debtor GILBERT GITHERE (hereinafter "Judgment Debtor"). Attached hereto as Exhibit "A" is a true and correct copy of the Judgment.

3. On that date, the Court issued its Order Granting Defendants Aloha Stadium Authority, Inc. and Stephen Lee's Motion to Dismiss Second Amended Complaint; Granting Defendants Consolidated Amusement Company, Ltd. and Jon Tellis' Motion for Summary Judgment; and Denying Plaintiff's Motion to Amend Complaint and Counter Motion for Summary Judgment. Attached hereto as Exhibit "B" is a true and correct copy of that Order.

4. On August 10, 2005, Judgment Creditors filed their Bill of Costs and Memorandum in Support of Bill of Costs. This Court awarded costs taxed in the amount of \$4,495.01 on September 6, 2005. Attached hereto as Exhibit "C" is a true and correct copy of the Bill of Costs taxed against Judgment Debtor.

5. Judgment Creditors are still the owner and holder of the Judgment, and the principal sum of \$4,495.01 remains due, owing, and unpaid by Judgment Debtor.

6. I sent a letter to Judgment Debtor's counsel on September 7, 2005 requesting immediate payment of the principal sum. Attached hereto as Exhibit "D" is a true and correct copy of that letter.

7. Judgment Debtor never responded to my September 7, 2005 letter.

8. There is an appeal pending by Judgment Debtor from the Judgment. The Judgment, however, has not been reversed or set aside, and remains in full force and effect as against Judgment Debtor.

9. Plaintiff filed a Motion to Stay Execution of Defendants' Bill of Costs on October 3, 2005. Attached hereto as Exhibit "E" is a true and correct copy of that motion.

10. Plaintiff's Motion to Stay Execution of Defendants' Bill of Costs was denied without prejudice by the Ninth Circuit on November 28, 2005. Attached hereto as Exhibit "F" is a true and correct copy of the Ninth Circuit's Order.

11. This Ex Parte Motion is being made to obtain an order by the court to examine Judgment Debtor in order to enforce this Court's Judgment.

Executed this 6<sup>th</sup> day of December, 2005 at Honolulu, Hawaii.

  
\_\_\_\_\_  
TAMARA M. GERRARD

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT  
CORPORATION, LTD.; ALOHA  
STADIUM AUTHORITY, INC., and  
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

DECLARATION OF HEATHER M.  
RICKENBRODE

**DECLARATION OF HEATHER M. RICKENBRODE**

I, HEATHER M. RICKENBRODE, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am an attorney duly licensed to practice in the State of Hawaii and represent Defendants and Judgment Creditors CONSOLIDATED AMUSEMENT CORPORATION, LTD and JOHN TELLIS (hereinafter "Judgment Creditors") in the above-entitled matter.
2. I sent a letter to Judgment Debtor's counsel on November 15, 2005 requesting immediate payment of the principal sum, and informing him that Judgment Creditors would be filing the instant Motion if the sum remained unpaid by November 28, 2005. Attached hereto as Exhibit "G" is a true and correct copy of that letter.

3. Judgment Debtor never responded to my November 15, 2005 letter.
4. I sent a letter to Judgment Debtor's counsel on December 1, 2005 requesting immediate payment of the principal sum, and informing him that Judgment Creditors would be filing the instant Motion if the sum remained unpaid by December 6, 2005. Attached hereto as Exhibit "H" is a true and correct copy of that letter.

5. Judgment Debtor never responded to my December 1, 2005 letter.

Executed this 6<sup>th</sup> day of December, 2005 at Honolulu, Hawaii.

Heather M. Rickenbrode  
HEATHER M. RICKENBRODE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,  
Plaintiff,

v.

CONSOLIDATED AMUSEMENT  
CORPORATION, LTD.; ALOHA  
STADIUM AUTHORITY, INC., and  
John Tellis, General Manager,  
Defendants.

CIVIL NO. CV04 00116 DAE LEK

ORDER GRANTING  
DEFENDANTS CONSOLIDATED  
AMUSEMENT COMPANY, LTD.  
AND JOHN TELLIS' EX PARTE  
MOTION FOR EXAMINATION OF  
JUDGMENT DEBTOR

ORDER GRANTING DEFENDANTS CONSOLIDATED AMUSEMENT  
COMPANY, LTD. AND JOHN TELLIS' EX PARTE MOTION FOR  
EXAMINATION OF JUDGMENT DEBTOR

TO: GILBERT GITHERE, PLAINTIFF AND JUDGMENT DEBTOR.

IT IS HEREBY ORDERED that you, the above-named Judgment Debtor,  
appear before the Honorable LESLIE E. KOBAYASHI, Judge of the above entitled  
court, presiding in the above-entitled proceeding in the United States Courthouse,  
PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu Hawaii, on  
JAN 20 2006, the \_\_\_\_\_ day of \_\_\_\_\_, 2008, at the hour of  
9:00, A.m., then and there to be examined as to any and all property you may  
own or have an interest in and what debts are owing to you. Bring with you all  
books, papers and documents you have showing and tending to show what

property you may own or have an interest in and what debts are owing to you.

THIS ORDER SHALL BE NULL AND VOID AND OF NO EFFECT IF NOT  
SERVED ON OR BEFORE \_\_\_\_\_.

DATED: Honolulu, Hawaii, DEC 06 2005

LESLIE E. KOBAYASHI  
Judge of the Above Entitled Court

---

GILBERT GITHERE V. CONSOLIDATED AMUSEMENT CORPORATION,  
LTD.; ALOHA STADIUM AUTHORITY, INC., AND JOHN TELLIS,  
GENERAL MANAGER; Civil No. CV04 00116 DAE LEK; ORDER  
GRANTING DEFENDANTS' EX-PARTE MOTION FOR EXAMINATION OF  
JUDGMENT DEBTOR



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT  
CORPORATION, LTD.; ALOHA  
STADIUM AUTHORITY, INC., and  
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and accurate copy of the foregoing document was duly served upon the following individual(s) by hand delivery, addressed as follows:

Andre' S. Wooten, Esq.  
1188 Bishop Street, Suite 1909  
Honolulu, HI 96813

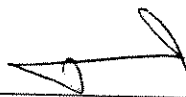
Attorney for Plaintiff  
GILBERT GITHERE

John Cregor, Deputy Attorney  
Department of the Attorney General  
Labor Division  
425 Queen Street  
Honolulu, HI 96813

Attorney for Defendant  
ALOHA STADIUM AUTHORITY, INC.

DATED: Honolulu, Hawaii, December 6, 2005.

TORKILDSON, KATZ, FONSECA,  
MOORE & HETHERINGTON,  
Attorneys at Law, A Law Corporation



---

RICHARD M. RAND  
TAMARA M. GERRARD  
HEATHER M. RICKENBRODE  
Attorneys for Defendant  
CONSOLIDATED AMUSEMENT  
COMPANY, LTD. and JOHN TELLIS

**EXHIBIT "B"**

ANDRE S. WOOTEN #3887  
Attorney At Law  
Suite 1909, Century Square  
1188 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 545-4165

Attorney for Plaintiff

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 23 2005

at 2 o'clock and 40 min. P.M.  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

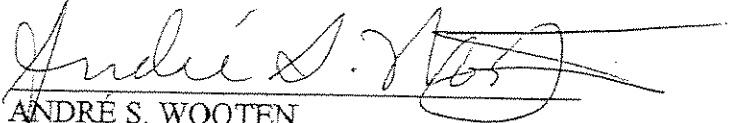
GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff,	)	NOTICE OF MOTION; MOTION FOR
	)	STAY OF EXECUTION OF COLLECTION
vs.	)	OF COSTS BILLED PENDING APPEAL;
	)	DECLARATION OF COUNSEL; EXHIBIT
CONSOLIDATED AMUSEMENT	)	"A"; CERTIFICATE OF SERVICE
CORPORATION; ALOHA STADIUM	)	
AUTHORITY, INC.; and JOHN TELLIS,	)	Hearing: FEB 24 2006
General Manager,	)	Time: 9:00 am
	)	Judge: DAVID ALAN EZRA
Defendants.	)	
	)	

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that the following Motion for Stay of Execution of  
Collection of Costs Billed Pending Appeal shall come on for hearing before the Honorable  
DAVID ALAN EZRA, Judge of the above-entitled court, in his/her courtroom  
in the United States Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, on  
2/24, 2006, at 9 o'clock A.m., or as soon thereafter as counsel  
may be heard.

EXHIBIT B

DATED: Honolulu, Hawaii, Dec 6, 2005

  
ANDRÉ S. WOOTEN  
Attorney for Plaintiff



5. The Defendant is a multi-state company operating throughout the west coast, if not the entire U.S.A. Indeed, the contract that they lost that was the subject of this case

was worth \$15 million a year and was just a small part of their theater and entertainment concession business statewide and nationwide. Plaintiff, on the other hand, is a small independent businessman, a vendor at the swap meet, for whom the assessment of \$4,000.00 in costs is a very high and hard burden, as he seeks to support his family and keep his business above water.

6. Balancing the equities involved and how much a \$4,000 assessment of cost damages prior to an entire resolution of the case mitigates for a stay of execution of the Bill of Costs of in excess of \$4,000 in this case, as the levy of costs would distinctly and directly hamper Plaintiff's ability to continue to do business and prosecute his appeal and deprive him of the resources to do so and, therefore, limit his constitutional rights to petition for redress of the violation of his constitutional rights in the court.

7. Therefore, based upon the balancing of the effect of immediate payment upon the parties, the burden would fall severely upon Plaintiff to pay costs prematurely, whereas the multi-national corporation, Consolidated Amusement Company, Inc., would scarcely feel the temporary denial or receipt of these funds at all.

Wherefore, Plaintiff respectfully requests that the Court grant this petition for a stay in the execution of collection of the Bill of Costs in this case pending appeal and a final resolution of this matter.

Further, Declarant sayeth naught.

  
ANDRE' S. WOOTEN



AO 133

(Rev. 9/89) Bill of Costs

## UNITED STATES DISTRICT COURT

District of Hawaii

GILBERT GITHERE

V.

## BILL OF COSTS

CONSOLIDATED AMUSEMENT CORP., INC.

Case Number: 04-00116 DAE LEK

Judgment having been entered in the above entitled action on 7/26/2005 against Plaintiff Gilbert Githere  
the Clerk is requested to tax the following as costs: Date

Fees of the Clerk .....	\$	
Fees for service of summons and subpoena .....		270.00
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case .....		3,376.28
Fees and disbursements for printing .....		473.73
Fees for witnesses (itemize on reverse side) .....		36.00
Fees for exemplification and copies of papers necessarily obtained for use in the case .....		339.00
Docket fees under 28 U.S.C. 1923 .....		
Costs as shown on Mandate of Court of Appeals .....		
Compensation of court-appointed experts .....		
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....		
Other costs (please itemize) .....		
<b>TOTAL</b>	<b>\$</b>	<b>4,495.01</b>

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

## DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: Andre Wooten, Esq., 1188 Bishop St., #1909, Honolulu.

Signature of Attorney: [Signature]Name of Attorney: Tamara M. Gerrard, Esq., Torkildson, Katz, Fonseca, Moore & HetheringtonFor: Defendants Consolidated Amusement Co., Ltd. and Jon Telles

Name of Claiming Party

Date: August 10, 2005Costs are taxed in the amount of \$4,495.01

and included in the judgment.

Sue Beitia

Clerk of Court

By: [Signature]

Deputy Clerk

September 6, 2005

Date

SEAL

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION AND ALOHA STADIUM	)	
AUTHORITY, INC., John Tellis, General	)	
Manager,	)	
	)	
Defendants.	)	
	)	

---

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were delivered upon the  
following parties at their last-known addresses by means of hand delivery on

December 7, 2005.

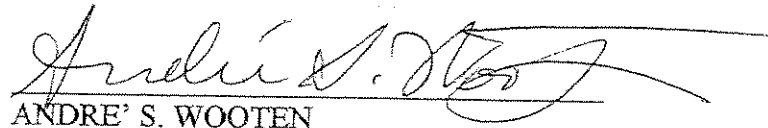
CINDY S. INOUE, ESQ.  
JOHN M. CREGOR, JR., ESQ.  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

Attorneys for Defendant  
ALOHA STADIUM AUTHORITY, INC.

RICHARD M. RAND, ESQ.  
TAMARA M. GERRARD, ESQ.  
Torkildson, Katz, Fonseca, Moore & Hetherington  
700 Bishop St., 15<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Attorneys for Defendants  
CONSOLIDATED AMUSEMENT COMPANY, LTD.  
and JOHN TELLIS

DATED: Honolulu, Hawaii, Dec 6, 2005

  
\_\_\_\_\_  
ANDRE' S. WOOTEN  
Attorney for Plaintiff

**EXHIBIT "C"**

ANDRE S. WOOTEN #3887  
Attorney At Law  
Suite 1909, Century Square  
1188 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 545-4165

Attorney for Plaintiff

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 23 2005

at 2 o'clock and 35 min P.M.  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

vs.

CONSOLIDATED AMUSEMENT  
CORPORATION; ALOHA STADIUM  
AUTHORITY, INC.; and JOHN TELLIS,  
General Manager,

Defendants.

CIVIL NO. 04-00116 DAE-LEK

EX PARTE MOTION TO SHORTEN TIME  
FOR HEARING ON MOTION FOR STAY  
OF EXECUTION OF COLLECTION OF  
COSTS BILLED PENDING APPEAL;  
DECLARATION OF COUNSEL; ORDER  
GRANTING EX PARTE MOTION TO  
SHORTEN TIME FOR HEARING ON  
MOTION FOR STAY OF EXECUTION OF  
COLLECTION OF COSTS BILLED  
PENDING APPEAL; CERTIFICATE OF  
SERVICE

Hearing:

Time:

Judge:

FEB 24, 2006

9 AM

DAVID ALAN EZRA

EX PARTE MOTION TO SHORTEN TIME FOR  
HEARING ON MOTION FOR STAY OF EXECUTION  
OF COLLECTION OF COSTS BILLED PENDING APPEAL

Plaintiff GILBERT GITHERE, by and through his attorney, André S. Wooten,  
hereby moves this Court, ex parte, for an order shortening the time for hearing on his Motion for  
Stay of Execution of Collection of Costs Billed Pending Appeal lodged on December 7, 2005.

EXHIBIT

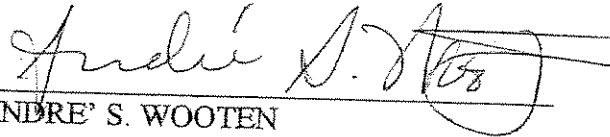
C

This Motion is made on the grounds that good cause exists for a shortened time for hearing, as presented herein.

This Motion is based upon Rules 8, 12, 24, 26 and 34 of the Federal Rules of Civil Procedure, Rule 7.5 of the Local Rules, the attached Declaration of Counsel, and such further information as may be presented at a hearing on the Motion.

DATED: Honolulu, Hawaii,

Dec 8, 2006



ANDRE' S. WOOTEN  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff,	)	DECLARATION OF COUNSEL
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION; ALOHA STADIUM	)	
AUTHORITY, INC.; and JOHN TELLIS,	)	
General Manager,	)	
	)	
Defendants.	)	
	)	

---

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney for Plaintiff in the above-entitled matter.
2. This matter is presently on appeal before the Ninth Circuit Court of Appeals as Plaintiff has filed a Notice of Appeal, the Opening Brief for which is not yet due as of December 12, 2005, and a transcript having been ordered but not yet received.
3. Defendant Consolidated Amusement Company prevailed in a summary judgment motion which denied Plaintiff his constitutional right to a jury trial under the Fourteenth Amendment, due process and equal protection clauses and the First Amendment.
4. Plaintiff has a very good chance of prevailing on appeal based upon new Ninth Circuit cases liberally interpreting files which were not cited by the District Court.
5. The Defendant is a multi-state company operating throughout the west coast, if not the entire U.S.A. Indeed, the contract that they lost that was the subject of this case

was worth \$15 million a year and was just a small part of their theater and entertainment concession business statewide and nationwide. Plaintiff, on the other hand, is a small independent businessman, a vendor at the swap meet, for whom the assessment of \$4,000.00 in costs is a very high and hard burden, as he seeks to support his family and keep his business above water.

6. Balancing the equities involved and how much a \$4,000 assessment of cost damages prior to an entire resolution of the case mitigates for a stay of execution of the Bill of Costs of in excess of \$4,000 in this case, as the levy of costs would distinctly and directly hamper Plaintiff's ability to continue to do business and prosecute his appeal and deprive him of the resources to do so and, therefore, limit his constitutional rights to petition for redress of the violation of his constitutional rights in the court.

7. Therefore, based upon the balancing of the effect of immediate payment upon the parties, the burden would fall severely upon Plaintiff to pay costs prematurely, whereas the multi-national corporation, Consolidated Amusement Company, Inc., would scarcely feel the temporary denial or receipt of these funds at all.

8. Defendant Consolidated has filed an Ex Part motion to execute and collect upon the cost bill. And Plaintiff argues that as the appeal is pending such efforts are pre-mature and prejudicial to Plaintiff-Appellant.

Wherefore, Plaintiff respectfully requests that the Court grant this petition for a stay in the execution of collection of the Bill of Costs in this case pending appeal and a final resolution of this matter.

Further, Declarant sayeth naught.





ANDRE' S. WOOTEN

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

vs.

CONSOLIDATED AMUSEMENT  
CORPORATION AND ALOHA STADIUM )

AUTHORITY, INC., John Tellis, General  
Manager, )

Defendants. )

) CIVIL NO. 04-00116 DAE/LEK

) ORDER GRANTING EX PARTE MOTION  
) TO SHORTEN TIME FOR HEARING ON  
) MOTION FOR STAY OF EXECUTION OF  
) COLLECTION OF COSTS PENDING  
) APPEAL

ORDER GRANTING EX PARTE MOTION TO  
SHORTEN TIME FOR HEARING ON MOTION FOR STAY  
OF EXECUTION OF COLLECTION OF COSTS PENDING APPEAL

The Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of  
~~Execution of Collection of Costs Billed Pending Appeal~~ having come before this Honorable  
Court, and the Court having examined the Declaration of Counsel and the records and files herein,  
and good cause appearing therefor,

IT IS HEREBY ORDERED that the Ex Parte Motion to Shorten Time for  
Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal is granted  
and that the Motion for Stay of Execution of Collection of Costs Billed Pending Appeal shall be  
heard before the Honorable \_\_\_\_\_, Judge of the above-entitled  
court, in his/her courtroom in the United States Courthouse, 300 Ala Moana Blvd., Honolulu,

Hawaii, at \_\_\_\_\_ o'clock \_\_\_\_m. on \_\_\_\_\_ or as soon thereafter as counsel  
may be heard.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Judge of the Above-Entitled Court

**DENIED**

**DAVID ALAN EZRA**

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION AND ALOHA STADIUM	)	
AUTHORITY, INC., John Tellis, General	)	
Manager,	)	
	)	
Defendants.	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were delivered upon the  
following parties at their last-known addresses by means of hand delivery on

\_\_\_\_\_

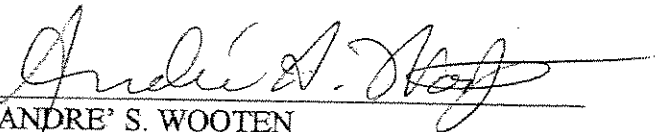
CINDY S. INOUE, ESQ.  
JOHN M. CREGOR, JR., ESQ.  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

Attorneys for Defendant  
ALOHA STADIUM AUTHORITY, INC.

RICHARD M. RAND, ESQ.  
TAMARA M. GERRARD, ESQ.  
Torkildson, Katz, Fonseca, Moore & Hetherington  
700 Bishop St., 15<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Attorneys for Defendants  
CONSOLIDATED AMUSEMENT COMPANY, LTD.  
and JOHN TELLIS

DATED: Honolulu, Hawaii, December 8, 2005

  
ANDRE' S. WOOTEN  
Attorney for Plaintiff

NO. 05-16738

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff-Appellant,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION INC.; JOHN	)	
TELLIS, General Manager of	)	
Consolidated Amusement Inc.,	)	
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
ALOHA STADIUM AUTHORITY	)	
INC.,	)	
	)	
Defendant.	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties at their last-known address by means of hand delivery on

January 4, 2006.

RICHARD M. RAND, ESQ.  
TAMARA M. GERRARD, ESQ.  
Torkildson, Katz, Fonseca, Moore & Hetherington  
700 Bishop St., 15<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Attorneys for Defendants-Appellees

CINDY S. INOUE, ESQ.  
JOHN M. CREGOR, JR., ESQ.  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

Attorneys for Defendant  
ALOHA STADIUM AUTHORITY, INC.

DATED: Honolulu, Hawaii,

Jan 3, 2006



ANDRE' S. WOOTEN  
Attorney for Plaintiff